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CHARLES ELMER

IN THE
Supreme Court of the United States
OCTOBER TERM, 1940.

No. 1072.

95

THE PEOPLE OF PUERTO RICO,

Petitioner,

v.

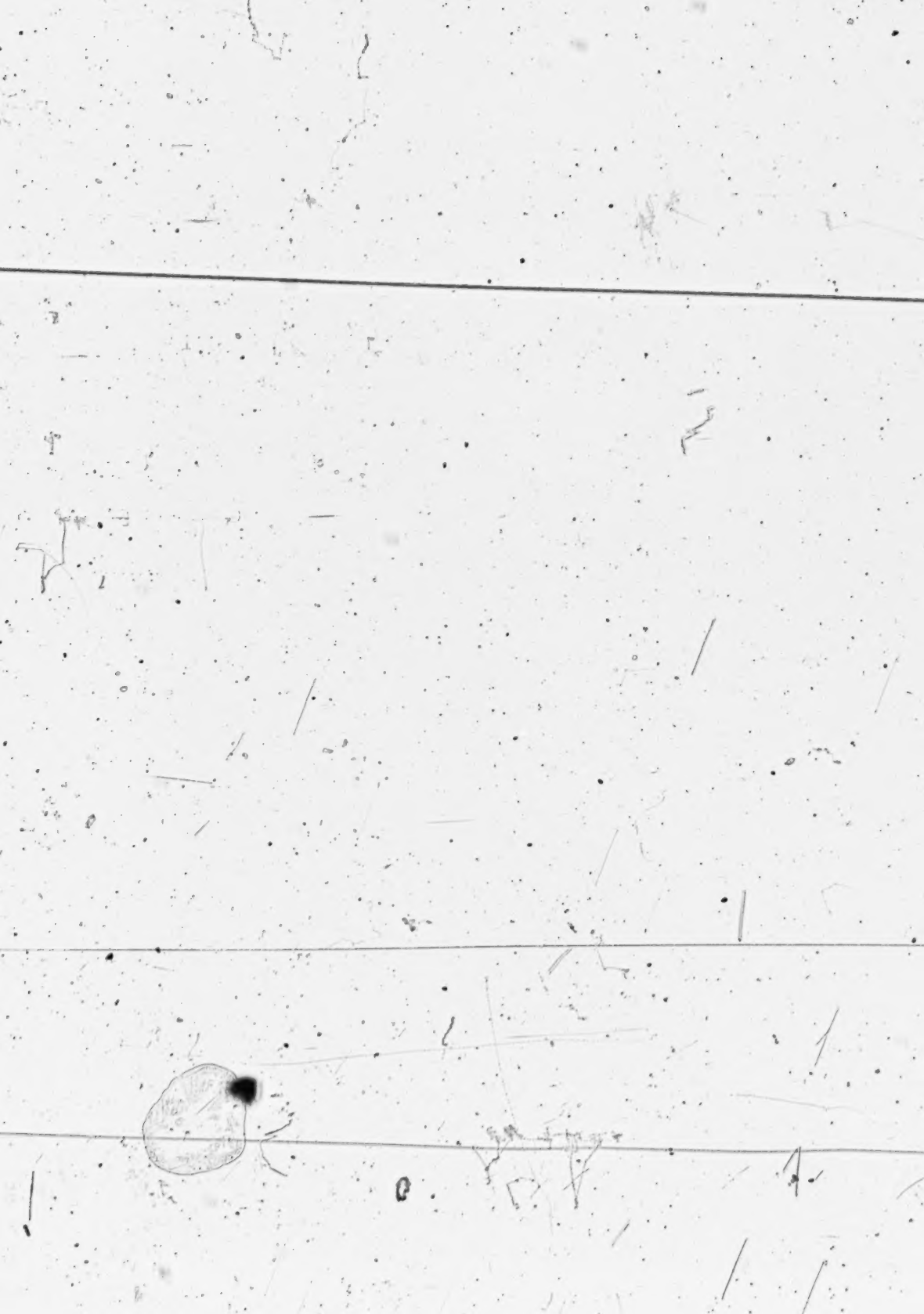
RUSSELL & CO., S. EN C.,

Respondent.

**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI.**

✓
GEORGE M. WOLFSON,
Attorney for Respondent.

ROUNDS, MEAD & WOLFSON,
CUTHBERT B. CATON,
Of Counsel.



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v.

RUSSELL & Co., S. EN C.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

The opinion, of the Circuit Court of Appeals appears in 118 F. (2d) 225 (Advance Sheets), and in the Record, page 180.

The opinion of the Supreme Court of Puerto Rico is reported in 56 Decisiones de Puerto Rico (Spanish edition) 343. It has not yet appeared in the English publication of the Puerto Rico Reports, but a translation of the opinion will be found in the Record, page 148.

The opinion of the District Court of San Juan is not officially reported but will be found in the Record, page 54.

Jurisdiction:

The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938; Title 28 U. S. C., §347.

Questions Presented.

1. Does Act No. 49 of 1921 (Laws of Puerto Rico 1921, p. 366) impair the obligations of the irrigation contract dated August 26, 1914 between the Acting Commissioner of the Interior of Puerto Rico, as party of the first part, and Fortuna Estates, party of the second part (R. 22, 24 to 38), and the irrigation contract dated August 26, 1914, between said Acting Commissioner, as party of the first part, and José A. Poventud and others, parties of the second part (R. 41 to 53), in contravention of the following provision of the bill of rights contained in the Puerto Organic Act:

"No law impairing the obligation of contracts shall be enacted" (Title 48 U. S. C. §737) ?

If this Court reaches the conclusion that the decision of the Circuit Court of Appeals, 118 F. (2d) 225 (R. 180), is correct in holding that said Act No. 49 is invalid as being in violation of said provision of the Organic Act, no further questions will be presented. But if there be doubt as to the correctness of said decision the following additional questions are presented:

2. Is said Act No. 49 invalid in that it delegates to administrative officers the legislative functions of determining the amount of tax to be levied and of levying the

tax, in contravention of Section 25 of the Organic Act (Title 48 U. S. C. §811) vesting all legislative powers in the Puerto Rico legislature?

3. Is said Act No. 49 invalid as being in contravention of the due process provision of the bill of rights in the Organic Act (Title 48 U. S. C. §737) and in violation of the Treaty of Paris, by taking away respondent's water rights under the Spanish concessions owned by respondent, and in further contravention of the due process clause by failing to grant to the taxpayer an opportunity for a hearing before the taxes become fixed?

4. Is said Act No. 49 invalid in that it denies to respondent the equal protection of the laws and further violates the requirement of the Organic Act that the rule of taxation in Puerto Rico shall be uniform (Title 48 U. S. C. §737)?

Statutes.

The provision of the Organic Act upon which the decision of the Circuit Court of Appeals rests reads as follows:

"No law impairing the obligation of contracts shall be enacted" (Title 48 U. S. C. §737).

The other provisions of the Organic Act hereinabove referred to, as well as the complete text of said Act No. 49 of 1921 and applicable portions of other Insular statutes, will be found in the appendix.

Statement of the Case.

Wherever hereinafter used the word "respondent" shall include the predecessors in title of the respondent and of respondent's lessors.

The facts and the rather involved history of this litigation are fully and fairly set forth in the opinion of the Circuit Court of Appeals (R. 180 to 191).

As bearing upon the intention of the petitioner to impose upon respondent, under the guise of taxation, a charge for the waters which under the 1914 contracts petitioner had agreed to deliver as the fair equivalent of the prior rights and concessions of respondent, particular attention is called to the following facts: Following the making of the contracts petitioner attempted to divert from respondent and sell to others the surplus waters which petitioner had agreed by the contracts could be taken by respondent until petitioner should undertake the utilization of such surplus waters (R. 188, 29). Petitioner was finally enjoined by decision of the Circuit Court of Appeals from such diversion of waters (*People of Porto Rico v. Russell & Co.*, 268 Fed. 723; R. 188). The opinion of the Circuit Court of Appeals in that case was filed October 28, 1920. Immediately thereafter and at the next session of the legislature said Act No. 49 (Laws of Puerto Rico 1921, page 366) was passed in an attempt to exact a charge for the waters which petitioner was obligated by contract to furnish, and part of which the court had enjoined petitioner from diverting.

Attention should also be called to the fact that on the trial of this case the petitioner adduced testimony designed to show that benefits were derived by respondent from the regular delivery of water under the contracts (R. 85, 91), although it was admitted that no water in excess of the stipulated amounts was received (R. 84, 92, 93), and that the irrigation system as affected by the existence of the contracts was of great benefit to the People of Puerto Rico (R. 94, 97). It would seem that such testimony is of small, if any, importance. For the purposes of this case we are

prepared to assume that both parties to the contracts relinquished certain rights and derived certain benefits and that the contracts were not unconscionable in leaving either party at the mercy of the other. A nice appraisal of relative benefits under the contracts is unnecessary to the determination of the issues herein. The question is whether the People of Puerto Rico, having entered into the contracts, should be permitted to retain the benefits derived therefrom and at the same time deprive the respondent of its rights by charging it for the water under Act No. 49 of 1921.

We also challenge the statement appearing on page 7 of the petition for certiorari that to permit the decision of the Circuit Court of Appeals to stand would disrupt the entire system of ascertainment, apportionment and assessment of the annual costs of operating and maintaining the Southern Coast Public Irrigation System. Respondent's lands are not within the Irrigation System and are not and never were subject to tax under the 1908 Law, as amended (R. 181, 188; R. 4, par. V of Complaint). The taxes provided in the applicable statutes for the users of water whose lands are included within the irrigation system are not here under attack and are not involved in this litigation (R. 1-6). Those statutes were in force for many years prior to the enactment of Act No. 49. Had respondent's rights and concessions been condemned and appropriate compensation paid therefor, or had they been purchased by petitioner under an arrangement crediting the purchase price against irrigation taxes to be assessed in the future,—either of which alternatives were permitted by existing statutes—it would have been proper to include respondent's lands in the irrigation district and to tax respondent for water used on the same basis as other users in the district (R. 190; Sec. 12, 1908 Irrigation Law, Appendix, p. 23; Sec. 11, 1913 Irri-

gation Law, Appendix, p. 27). But neither alternative was adopted, and in lieu thereof the 1914 contracts were made which, as required by statute, obligated petitioner to furnish to respondent waters amounting to the *fair equivalent* of the waters previously received under their ancient rights and concessions (Laws of P. R. Extr. Sess. 1913, p. 72, Sec. 13, Appendix, pp. 29, 30). ~~Petitioner's charge that the decision of the Circuit Court of Appeals disrupts the scheme of taxation in the irrigation district seems entirely unwarranted by the facts.~~

ARGUMENT.

I.

Act No. 49 of 1921 is invalid in that it impairs the obligations of the contracts of August 26, 1914.

In support of this argument there is little that we can add to the opinion of the Circuit Court of Appeals. As the court states (R. 189, 190; 118 F. (2d) at pp. 230, 231):

"Since the defendants did not wish to relinquish its water rights, and apparently the plaintiff did not wish to condemn and pay for them, they entered into a contract to provide the defendant with the equivalent of its water rights.

.

There is nothing in the contract providing that the defendant pay either for the equivalent in value of water which it had heretofore received free or for delivery of such water. The opposite is implicit in the entire contract.

.

The plaintiff frankly admits that the tax in question is 'very clearly simply a special tax to cover only appellant's fair share of the actual current

maintenance costs of the irrigation works'. That is the entire difficulty. The appellant has no 'fair share' of the maintenance cost of the irrigation works to bear. It was entitled to free water before the passage of the Acts in question. The so-called tax clearly imposes a burden upon the defendant's present right to receive the water agreed to be delivered to it by the plaintiff as a substitute for its old free water rights. We agree with the former opinion of this court in *People of Porto Rico v. Havemeyer, supra*, that this Act undertakes to make the contractual right to receive the water agreed upon conditional on the payment of the taxes in question, and impairs the contractual obligation to furnish the water with no conditions in consideration of the right to build the irrigation system.

The plaintiff had an opportunity to condemn the rights and pay their full value. If after such condemnation, the land was furnished water from the system the defendant would be in the position of one who had never possessed water rights and would be subject to assessments for construction, maintenance and operation. So also if the defendant had relinquished its rights in consideration of inclusion in the district and a credit of the value of the surrendered rights against such assessments. The plaintiff made no such arrangements for payment of value. In effect, it suspended the defendant's rights without compensation and now desires to force it to pay the cost of providing it with water as though it held no rights, in spite of the contractual obligation to provide their equivalent. In such a situation the words of the Supreme Court of the United States in *Woodruff v. Trapnall*, 10 How. 190, 207 (U. S. 1850) seem particularly applicable:

A State can no more impair, by legislation, the obligation of its own contracts, than it can impair the obligation of the contracts of indi-

viduals. We naturally look to the action of a sovereign State, to be characterized by a more scrupulous regard to justice, and a higher morality, than belong to the ordinary transactions of individuals."

See also *Antoni v. Greenhow*, 107 U. S. 769, 795 (1882); *Hall v. Wisconsin*, 103 U. S. 5 (1880); *Green v. Biddle*, 8 Wheat. 1, 92 (U. S. 1832)."

It is submitted that the authorities relied on by the Circuit Court of Appeals amply sustain its decision.

The opinion of the Circuit Court of Appeals on the prior appeal in this case is equally persuasive (62 F. (2d) 10—reversed on jurisdictional grounds 288 U. S. 476).

In *Murray v. Charleston*, 96 U. S. 432, it appeared that the city of Charleston passed an ordinance assessing a general tax on city stock, and by the ordinance the city was allowed to retain as a tax part of the interest due on the stock. The State court held that the ordinance did not impair the obligation of the contract between the city and the holder of the stock, as the possibility of such a tax was in the contemplation of the parties when the plaintiff bought his stock. The Supreme Court of the United States held that the ordinance was void, as it impaired the obligation of the contract between the parties. The Court said at page 444:

"The constitutional provision against impairing contract obligations is a limitation upon the taxing power, as well as upon all legislation, whatever form it may assume."

Continuing, the Court said at page 448:

"There is no more important provision in the Federal Constitution than the one which prohibits

States from passing laws impairing the obligation of contracts, and it is one of the highest duties of this court to take care the prohibition shall neither be evaded nor frittered away. Complete effect must be given to it in all its spirit. The inviolability of contracts, and the duty of performing them, as made, are foundations of all well-ordered society, and to prevent the removal or disturbance of these foundations was one of the great objects for which the Constitution was framed."

Another decision presenting features similar to those in the case at bar is *Gulf, &c. Railroad v. Adams*, 90 Miss. 559.

II.

Act No. 49 of 1921 is invalid in that it delegates to administrative officers the legislative functions of determining the amount of tax to be levied and of levying the tax.

The Circuit Court of Appeals on the first appeal in this case, in addition to holding that Act No. 49 impaired the obligations of the 1914 contracts, also held that it was void in that it delegated to the Commissioner of Interior the legislative function of determining the amount to be raised for the ensuing year, such computation being more than mere computation by an administrative official, and involving an exercise of legislative power (62 F. (2d) 10, 16). The Circuit Court of Appeals on the second appeal (from which an appeal to this Court is sought by petitioner) did not address itself to this question, being content to rest its decision on the impairment of the obligations of the 1914 contracts.

Section 25 of the Organic Act (Title 48 U. S. C. §811) vests all legislative power in the Puerto Rico legislature and is similar in wording to Article I, Section 1 of the United States Constitution. The functions of the legislature of Puerto Rico are described in Sections 34 and 37 of the Organic Act (Title 48 U. S. C. §§821-844). The general principles applicable to legislative delegation of power have been recently discussed at length by this Court in *Schechter Poultry Corp. v. United States*, 295 U. S. 495. It would appear to be settled beyond peradventure that the exercise of the taxing power is a legislative and not an administrative function and cannot be delegated to administrative officials.

"The power of taxation, existing exclusively in the legislature, cannot, unless the constitution so provides, be delegated to either of the other departments of the government, or to any individual, private corporation, officer, board, or commission," (61 Corpus Juris 84.)

As stated by Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316, 428:

"The only security against the abuse of this power, is found in the structure of the government itself. In imposing a tax the legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation.

"The people of a State, therefore, give to their government a right of taxing themselves and their property, and as the exigencies of government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituents over their representative, to guard them against its abuse"

See also:

Rich Hill Coal Company v. Bashore, 344 Pa. 449;

Van Cleve v. Commissioners, 71 N. J. L. 574;

Cooley on Taxation, 4th Ed., Vol. 1, pp. 184, 194,

Vol. 3, p. 2044.

There would seem to be no doubt that the fixing of the tax under Act No. 49 is delegated to administrators. Section 1 of Act No. 49 provides for a special tax in addition to other taxes to be levied upon all parcels of land which receive water from the irrigation system, but do not contribute to the payment of expenses. Section 2 of the Act provides for an estimate by the Commissioner of the Interior of the cost of operating and maintaining the irrigation system and authorizes the Treasurer to fix the total number of acres receiving water from the system. The tax is fixed by dividing the amount estimated by the Commissioner as the cost of operation by the number of acres receiving water as fixed by the Treasurer. Section 2 then goes on to provide that the tax "shall be levied and collected by the Treasurer . . . at the same time as any other tax imposed by the Public Irrigation Law." (See Appendix, p. 19.) Thus the Commission of the Interior and the Treasurer between them fix the total amount of tax to be collected and the amount to be assessed against each taxpayer.

III.

Act No. 49 deprives respondent of its property without due process of law (a) by taking away its water rights under the Spanish concessions, which are protected by the treaty of Paris, and (b) by failing to grant to the taxpayer any opportunity for a hearing before the taxes become fixed.

(a) It would seem clear that respondent's water rights under the Spanish concessions, or their "fair equivalent" provided by the contracts of August 26, 1914, are, in whole or in part, taken away by Act No. 49. That franchises are property is unquestionable.

Gulf, etc., Railroad Company v. Hewes, 183 U. S. 66, 77;

Monongahela Navigation Co. v. United States, 148 U. S. 312, 341;

Wilmington R. R. v. Reid, 13 Wall. 264, 268.

Although the Spanish concessions were suspended while the 1914 contracts remained in force, such suspension was only effected by a contract designed to provide respondent with an "equivalent". (See *People of Porto Rico v. Russell & Co.* 268 F. 723, 729). If that equivalent be removed in the guise of taxation and the concession be not restored, this is tantamount to confiscating the concession. These concessions are protected by the Treaty of Paris which is controlling on the Insular legislature.

Malloy's Compilation of Treaties, etc., Vol. 2, pp. 1690, 1692, 1693—Articles VIII, IX.

As the Attorney General of the United States said in a situation involving water rights in Puerto Rico (22 Op. Atty. Gen. 546, 548):

"If at the time the treaty of Paris took effect the applicant had a completed and vested right to the use of the waters of the River Plata, that right will be respected by the United States."

The provisions of Article VI of the United States Constitution declaring treaties to be the supreme law of the land are binding upon Puerto Rico and neither Puerto Rico nor any states or municipal corporations can interfere therewith.

Bacardi Corp. of America v. Domenech, 311 U. S. 150;

Baker v. Portland, 2 Fed. Cas. No. 777;

Worcester v. Georgia, 6 Pet. 515, 561.

(b) Act No. 49 contains no provision granting respondent an opportunity for a hearing before the taxes become fixed and in that respect further contravenes the due process clause.

Londoner v. Denver, 210 U. S. 373, 385:

" * * * where the legislature of a State * * * commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that at some stage of the proceedings before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing."

IV.

Act No. 49 denies to respondent the equal protection of the laws.

It is clear from a reading of the statute that it is aimed especially at those whose rights are protected by contracts, and there is no basis for the attempted classification found in the Act. The mere fact of classification is not sufficient; it must be one based upon some reasonable ground and cannot, as here, be a mere arbitrary selection.

Gulf, Col. & Santa Fe Railway v. Ellis, 165 U. S. 150, 165;

Cotting v. K. C. etc. Co.; 183 U. S. 79, 106.

V.

Act No. 49 violates the requirement of the organic act that the rule of taxation in Puerto Rico shall be uniform.

It is unnecessary to burden the Court with extended citation of authority as to the applicability of the uniformity rule. It is well stated in *Gilman v. City of Sheboygan*, 2 Black 510, 517, as follows: ?

“The uniformity must be coextensive with the territory to which it applies. If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution does not stop here. It must extend to *all property* subject to taxation, so that all property may be taxed alike—equally—which is taxing by uniform rule.”

The tax certainly cannot be sustained as a special assessment for benefits received, and by the very language of the statute, it cannot be construed to be a general property tax upon all lands in Puerto Rico. The tax is expressly confined to lands "which for irrigation purposes are supplied with water from the Southern Coast Public Irrigation System" (Appendix, p. 19). It is indeed a special law designed for the sole purpose of reaching those in the position of respondent who cannot be reached by the valid and effective public irrigation law. As the law cannot be sustained as a general property tax nor as a special assessment for benefits received, it would seem that it fails to meet the test which would require that it be levied uniformly on all taxpayers. The same circumstances which render the act invalid under the equal protection provisions of the Organic Act would seem to deprive it of the necessary uniformity.

VI.

This case does not involve the construction or application of a local law.

Petitioner strives to establish in Point IV of his brief (p. 23) and also in the petition (p. 7) that this case involves a decision of the Insular Supreme Court interpreting and applying an Insular statute, and seeks to obtain the benefit of the rule that a decision of that court will not be reversed in such cases unless it is "patently erroneous" or "inescapably wrong". But we do not see that any question of construction or interpretation or application is here involved. The words of the statute are unambiguous and its purpose and application are clear. The same comment would apply to the 1914 Contracts (R. 24, 41). The only

question before this Court is whether that statute contravenes the fundamental law of Puerto Rico which is contained in the Organic Act. As to such questions it cannot be maintained that the decision of the Insular Court should be deemed final as this would deprive those whose rights are wrongfully invaded by the local legislature of any recourse except an appeal to the local courts. This was not the intention of Congress, and there is no warrant for the contention that the decisions of the local courts on questions of constitutional rights come within the protection of the rule mentioned by petitioner.

VII.

Certiorari herein should not be granted as a matter of course.

Petitioner suggests (Pet., pp. 7, 8) that certiorari might well be granted here as a matter of course, because under somewhat similar circumstances involving a state statute a definite right of review is provided. This argument would seem to defeat itself, because if it had been the intention of the Congress to provide for review as a matter of course of decisions invalidating the statutes of an Insular territory under its Organic Act, it would have been easy for Congress so to provide. In Rule 38 (5) of the Rules of this Court it is stated that a review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. There follows an illustrative list of cases in which certiorari will be considered. It does not appear that this case falls within any of the categories mentioned, and we submit that the decision of the Circuit Court of Appeals declaring Act No. 49 invalid is clearly correct.

It is further to be noted that no general system of taxation affecting the revenues of Puerto Rico is here involved, and the litigation would appear not to have any significant or general effect upon the autonomy of the Island, nor upon the operation of the Southern Coast Public Irrigation System (*supra*, p. 5). The statute in question covers a narrow field and imposes a special charge on a limited class, and the proceeds if collected would be used for a special and not a general purpose. Under the circumstances, we do not believe it can be said that the validity or effect of the statute is of great importance to the People of Puerto Rico. On the contrary, this is a case involving a dispute between the Insular government and a private litigant where the statement of this court in *Woodruff v. Trapnall*, 10 How. 190, 207 (*supra*, pp. 7, 8), that the action of a sovereign State should "be characterized by a more scrupulous regard to justice, and a higher morality, than belong to the ordinary transactions of individuals" has a peculiar appropriateness.

Conclusion.

The petition for writ of certiorari should be denied.

June, 1941.

Respectfully submitted,

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Attorney for Respondent.

ROUNDS, MEAD & WOLFSON,
CUTHBERT B. CATON,
Of Counsel.

Appendix.

Excerpts from the Organic Act of Porto Rico, Title 48, U. S. Code:

§ 737. *Bill of rights and restrictions.* No law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

No law impairing the obligation of contracts shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law.

The rule of taxation in Porto Rico shall be uniform.

§ 811. *Legislature; designation of.* All local legislative powers in Porto Rico, except as otherwise provided in this chapter, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "the Legislature of Porto Rico."

§ 821. *Legislative power.* The legislative authority shall extend to all matters of a legislative character not locally inapplicable, . . .

LAWS OF PORTO RICO—1921, p. 366.

No. 49

AN ACT.

FIXING A TAX ON CERTAIN LANDS USING WATER FROM THE SOUTHERN COAST PUBLIC IRRIGATION SYSTEM, ON WHICH LANDS NO TAX WHATSOEVER WAS LEVIED UNDER THE PUBLIC IRRIGATION LAW, AND FOR OTHER PURPOSES.

Be it Enacted by the Legislature of Porto Rico:

SECTION 1. That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system.

SECTION 2. That the tax to be levied on each tract of land receiving water from the irrigation system, but which under the law in force does not contribute towards defraying the cost of such system, shall be classified as follows: The Treasurer of Porto Rico shall have charge of fixing the total number of acres receiving water from the irrigation system which includes: (1) tracts of lands subject to taxation pursuant to the provisions of the public irrigation law and amendments thereto, for the purpose of reimbursing the cost of the irrigation works; (2) tracts of land to which the Irrigation Commission acknowledged the right to the use of water or to which such right was acknowledged by the courts in cases of appeal, as rights acquired under the law for the use of water under prior concessions; (3) tracts of land irrigated with water delivered in accordance with acquired rights or concessions which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the

Interior or because of decisions of the Irrigation Commission, is delivered in whole or in part and is measured at the canals of the Irrigation Service system, and such tracts shall be determined by dividing the value of the said concessions in acre feet per year, as the same may be or shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts, by four, that is to say, by the number of acre-feet per year established by the Public Irrigation Law as a normal rate for delivery per acre for the formation of the irrigation district; (4) parcels of land irrigated by water supplied because of acquired rights or concessions which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or under decisions of the Irrigation Commission, is taken and measured in the rivers at the points of intake indicated in the said concessions; and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or as shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts in cases of appeal, by five. The Treasurer of Porto Rico shall then take amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operations and maintenance of the irrigation system during the following fiscal year (as provided under Section 11 of Act 128, approved August 8, 1913, which amends the Irrigation Law approved September 18, 1908), and shall add thereto or subtract therefrom, as the case may be, any resulting deficit between or surplus over, the amount expended and certified to as expended by the Commissioner of the Interior for expenses of operation and maintenance of the irrigation system during the preceding fiscal year, and the amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operation and maintenance of the irrigation system during the aforesaid preceding fiscal year. The Treasurer shall then divide the amount so determined by the total number of acres computed as hereinbefore provided, and

the result shall be and shall constitute the tax per acre which shall be levied during said subsequent fiscal year on all tracts supplied with water from the southern coast public irrigation system, and which in no other manner are subject to the payment of a tax to meet the cost of the said irrigation system.

This tax shall be levied and collected by the Treasurer of Porto Rico at the same time as any other tax imposed by the Public Irrigation Law, and the moneys collected shall be covered into the Insular Treasury to the credit of a special trust fund known as the "Irrigation Fund," to be invested in the same manner and for the same purposes provided by the Public Irrigation Law and laws amendatory thereof.

SECTION 3. All laws or parts of laws in conflict herewith are hereby repealed.

SECTION 4. This Act shall take effect ninety days after its approval.

Approved, July 8, 1921.

Extracts from the Irrigation Law of Porto Rico (Laws of Porto Rico, Special Session, 1908, pages 44 to 70.)

AN ACT

TO PROVIDE FOR THE CONSTRUCTION OF AN IRRIGATION SYSTEM, AND TO PROVIDE REVENUES THEREFOR; FOR THE TEMPORARY APPROPRIATION OF TWO HUNDRED THOUSAND DOLLARS TO BEGIN SUCH WORK; AND FOR OTHER PURPOSES.

Be it Enacted by the Legislative Assembly of Porto Rico:

Section 1.—The sum of two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, for the purpose of carrying to completion the preparation of working plans and specifications for the construction of an irrigation system for the district situated approximately between the river Patillas on the east and the river Portugues on the west, and irrigable lands on both sides of both rivers and for the commencement and prosecution of the work of construction thereof, and expenses in connection therewith, until such time as sufficient funds shall be available in the Treasury from the sale of the bonds provided for such purpose by legislative enactment.

Section 3.—The proceeds of the sale of the bonds and all moneys accruing by reason of assessments of taxes and sales of water and power within the irrigation district shall, subject to the provisions of Section 29 of this Act, be deposited in the Treasury of Porto Rico, in a trust fund to be known as the "Irrigation Fund", which fund may be subdivided for statistical purposes as the Auditor may prescribe. All expenditures for the construction and maintenance of the irrigation system, and all payments of interest and principal of any debt incurred for the construction

of the said system, shall be payable from the said trust fund upon warrant of the Auditor countersigned by the Governor.

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Section 11.—Should it at any time appear that there is a surplus of water over and above the amount necessary to irrigate all the lands of the irrigation District, the Commissioner of the Interior shall proceed to sell such surplus water, on public calls for bids upon terms to be approved by the Executive Council, the proceeds of such sale to be covered into the Irrigation Fund.

Section 12.—The irrigation engineer herein provided, his officers, agents, or employees, shall have the right to enter, after notifying the owner or his representative, upon any lands to make surveys and to locate and establish any of the works contemplated or embraced in said irrigation system, including the lines of any canal, road, tunnel, reservoir site, aqueduct, power station, transmission lines or other requisite, but indemnity shall be paid to the owner for such damages as he may incur in consequence of said works. The Commissioner of the Interior shall have power, when necessary, to initiate suits for condemnation in the name of The People of Porto Rico for the acquisition of any land or right embraced within the approved plans of the said irrigation project, and for the purpose of such condemnation proceeding all land and water rights, all rights of way for the transmission of water and electric currents, all sites for reservoirs, canals, roads, tunnels, aqueducts, ditches, power stations, and other things embraced in and contemplated by said irrigation plan so approved, are hereby declared to be works of public utility, and as such are hereby declared subject to the power of eminent domain and open to expropriation proceedings in the manner provided by law. *Provided, however,* that all said rights and things, together with any existing and outstanding water rights not theretofore surrendered to The People of Porto Rico may be made subject of condemnation proceedings without com-

pliance with those provisions of law requiring a declaration of public utility by the Executive Council pursuant to the Act approved March 12, 1908, entitled "An Act to amend an act entitled 'An Act to provide for the condemnation of private property for the purposes and under the conditions therein named', approved March 12, 1903," or any other provisions relating to declarations of public utility *and provided; further* that the Executive Council shall at all times have authority to acquire for said irrigation system such rights and things wherever possible, by settlement out of court to avoid condemnation proceedings.

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Extracts from the 1913 Amendments to the Irrigation Law of Porto Rico (Laws of Porto Rico, Extraordinary Session, 1913, pages 54 to 84.)

AN ACT

TO AMEND CERTAIN SECTIONS OF THE PUBLIC IRRIGATION LAW, APPROVED SEPTEMBER 18, 1908, AS AMENDED;

TO AMEND CERTAIN OTHER LAWS RELATING TO THE IRRIGATION SYSTEM, AND THE ISSUE OF BONDS THEREFOR;

TO PROVIDE FOR THE FORMATION OF A TEMPORARY AND A PERMANENT IRRIGATION DISTRICT;

TO PROVIDE THE NECESSARY ADDITIONAL FUNDS FOR THE COMPLETION OF THE IRRIGATION SYSTEM, AND FOR MEETING THE OBLIGATIONS OF THE OUTSTANDING IRRIGATION BONDS, AND FOR THE OPERATION AND MAINTENANCE OF THE IRRIGATION SYSTEM UNTIL THE COMPLETION OF THE SAME, OR UNTIL SUFFICIENT FUNDS MAY BE RAISED THEREFOR FROM THE ASSESSMENTS UPON THE IRRIGABLE LANDS WHICH SHALL BE INCLUDED IN THE TEMPORARY OR IN THE PERMANENT IRRIGATION DISTRICTS HEREIN PROVIDED FOR, OR FROM OTHER REVENUES DERIVED FROM THE SAID IRRIGATION SYSTEM; AND FOR OTHER PURPOSES.

Be it enacted by the Legislative Assembly of Porto Rico:

SECTION 2.—That the said Irrigation Commission shall have the power, and are hereby directed, to fix, according to the provisions hereinafter contained, the geographical boundaries of both a temporary and a permanent irrigation district; to determine what irrigable land shall be included therein; and to determine, as hereinafter provided, the value of water rights or concessions, and the basis for the computation of credits to be given on account thereof, on the taxes to be assessed as hereinafter provided upon the lands to which the said water rights or concessions are appurtenant.

SECTION 7.—During the existence of the temporary irrigation district the Irrigation Commission shall have the power and is hereby directed to fix the boundaries of a permanent irrigation district, and to determine what irrigable lands are to be included therein. For the purpose of determining the said permanent irrigation district, the Irrigation Commission shall examine critically each tract or local subdivision which might be included in the said permanent irrigation district, examining not only the lands which were included in the temporary irrigation district, but also any lands not included in the said temporary irrigation district, but which, in their judgment, might be included in the said permanent irrigation district, with a view to determining what lands are so located and of such a nature that they can be profitably and successfully irrigated under the Public Irrigation Law, as amended, and as herein provided. It shall give due consideration to all water rights or concessions heretofore granted, also, as far as practicable, to the results and effects of the operation of the irrigation system during the existence of the temporary irrigation district, and shall include in the said permanent irrigation district such lands, and only such lands, as in the judgment of the Irrigation Commission are so located and of such a nature that they will receive by forming a part of the permanent irrigation district a benefit greater in amount than the total cost or burden imposed by law upon the said lands, as hereinafter provided.

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The said Irrigation Commission shall determine as to each water right or concession which is appurtenant to any tract of land, and which has been relinquished or transferred to The People of Porto Rico, and which shall not already have been valued by agreement reached between a representative or representatives of The People of Porto Rico and the owner or owners of the land to which the said water right or concession is appurtenant, its fair equivalent in value, stated in aere feet, per annum, reasonably distributed throughout the year; *Provided, however, That*

in no case shall the equivalent allowed for any such water right or concession be greater than the amount of water granted by, and beneficially used under, the said water right or concession as originally granted or as legally construed or limited.

The said Irrigation Commission shall then determine the basis for the computation of credits to be given on account of each relinquished water right or concession appurtenant to land included in the permanent irrigation district, upon the taxes assessed upon the said land, complying in all respects with the provisions of the contract, if any, for the relinquishment of the said water right or concession, and giving due consideration, in determining the basis for the said computation, to the conditions of the said contract of relinquishment and the extent to which the said water right or concession has, in effect, been relinquished. The Irrigation Commission shall compile a report of their findings as to the above basis for the computation of credits on taxation, stating in each case the percentage which the said credit shall bear to the total taxation which, but for such credit, would fall upon the lands to which the said water rights or concessions are appurtenant.

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Section 11.—The amount that shall be assessed and levied upon a given tract of land included in the permanent irrigation district shall be determined as follows:

The Treasurer of Porto Rico shall calculate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year and shall add thereto the total amount due upon credits for the ensuing year on account of water rights or concessions; and shall further add thereto the amount estimated and certified as estimated to him by the Commissioner of the Interior for the cost of operation and maintenance of the irrigation system for the said ensuing fiscal year. He shall then either add to or subtract from the amount so obtained the estimated amount of any deficit or surplus, as the case may be, existing in connection with the Irrigation Fund from the

operations of the current fiscal year. From this amount he shall subtract the amount estimated and certified as estimated to him by the Commissioner of the Interior as the receipts for the ensuing fiscal year from any water power developed in connection with the irrigation system (until such time as the total bonded indebtedness incurred on account of the irrigation system shall have been paid in full); and the amount estimated and certified as estimated to him by the Commissioner of the Interior as receipts for the ensuing fiscal year from any other sources except from the issues of bonds and from special assessments herein provided for to be levied upon the land in the permanent irrigation district. To the amount so determined the Treasurer shall add an amount equivalent to two per centum of the total as a margin of safety for delayed collections, and the amount thus determined by the Treasurer of Porto Rico, subject to the limitations and provisions hereinafter set forth, shall be and constitute the total sum assessed for the said fiscal year, and the same shall be levied upon the lands at the time included in the permanent irrigation district (including any lands owned by The People of Porto Rico which form part of the said district, which lands shall be liable for and pay taxes levied hereunder in the same manner as the other lands included in the said irrigation district);

The amount of credit on taxes to which any tract of land having a water right or concession shall be entitled on account of the relinquishment of the same shall be such percentage of such taxes as shall have been determined by the Irrigation Commission as hereinbefore provided.

No tract of land included in the permanent irrigation district shall pay any tax until it shall have received or have been offered water from the irrigation system for a period of twelve months (said water to have been received after the inclusion of the said land in the temporary irrigation district, or, if the said land is first included in the permanent irrigation district, after the said inclusion); but

thereafter the said tract of land shall be liable at the regular assessment dates to the same assessments as would have been the case had all the lands in the permanent irrigation district been assessed under the provisions of this section; *Provided*, That the said tract of land shall pay a tax for the portion of the half year (either fiscal or calendar, as the case may be), if any, remaining after the completion of the said period of twelve months, for which no taxes are paid in accordance with the foregoing provisions, and the tax due for any such portion of a half year shall be payable upon the first of the month succeeding the completion of the said period of twelve months for which no taxes are paid in accordance with the foregoing provisions.

Assessments under the foregoing provisions shall be made upon each particular tract of land in the proportion that the area of such tract of land bears to the whole number of acres included in the said permanent irrigation district.

SECTION 13.—In the case of any land carrying a water right or concession of which the source of supply is destroyed or impaired by the construction or operation of the irrigation system, which shall not have been relinquished or surrendered to The People of Porto Rico, such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession.

The Commissioner of the Interior is hereby authorized to negotiate with the owner or owners of such water rights or concessions, and with the owner or owners of any water rights or concessions heretofore relinquished or surrendered on condition that the lands to which they are appurtenant should form part of the irrigation district, and which lands have not been included by the Irrigation Commission, and the said Commissioner of the Interior shall be empowered to enter into agreements with such owner or owners as to the amount of water and the time, place and conditions of delivery thereof, which shall be delivered to the

lands to which the said water rights or concessions are appurtenant as the fair equivalent in value thereof, with the power on behalf of the Irrigation Service to enter into agreement with such owner or owners for the relinquishment to The People of Porto Rico of such water rights or concessions, and for the delivery to the lands to which the said water rights or concessions are appurtenant of such fair equivalent. Before entering into any such agreement, the Commissioner of the Interior shall consult the Attorney General of Porto Rico as to the validity and legal status of the water rights or concessions involved.

In the case of any water right or concession in connection with which no such contract or agreement is made prior to January 1, 1914, the Irrigation Commission shall have the power to decide as to the validity and the legal status of any such water right or concession, and in the case of valid and subsisting water rights or concessions to determine what amount of water must be delivered by the Irrigation Service to the lands to which such water rights or concessions are appurtenant.

